RECORD, CASE No. 13,268.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 212.

ELEANOR NESBIT, PLAINTIFF IN ERROR,

vs.

THE INDEPENDENT DISTRICT OF RIVERSIDE, IN THE COUNTY OF LYON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

FILED OCTOBER 11, 1888.

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1 UNITED STATES OF AMERICA, *Northern District of Iowa.*

Pleas before the circuit court of the United States for the northern district of Iowa, western division, at a term begun and holden at the city of Sioux City, in said district, on the first Tuesday in October, A. D. 1885, before Honorable O. P. Shiras, judge.

ELEANOR NESBIT, Plaintiff,
vs.
THE INDEPENDENT DISTRICT OF RIVERSIDE, in the County of Lyon, Defendant. } No. 70. Law.

Be it remembered that heretofore, to wit, on the 26th day of August, A. D. 1884, there was filed in this office a petition in words and figures following, to wit:

Petition.

In the United States Circuit Court, Northern Dist. of Iowa, Western Division, October Term, A. D. 1884.

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Def't. } Petition.

The said pl'ff, Eleanor Nesbit, alleges that she is an alien and citizen of Great Britain, and that the def't, The Independent
2 Dist. of Riverside, in the county of Lyon, is a municipal corporation and citizen of the State of Iowa.

And for cause of action against the said def't the plaintiff states—

First. That on or about the 27th day of March, A. D. 1873, the def't, for a valuable consideration and an compliance with the provision of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, duly executed and delivered to some one unknown to pl'ff its certain negotiable coupon bond of that date, number 14, whereby it promised to pay the bearer thereof, at the First National Bank in Sioux City, Iowa, at any time on or before March 27th, 1883, at its election, the sum of five hundred dollars, with interest at the rate of ten per cent. per annum, payable at said First National Bank, Sioux City, Iowa, semi-annually, on the 27th day of March and Sept. in each year, on presentation and surrender of the interest coupons thereto attached and numbered from one to twenty, inclusive. A copy of said bond, marked Exhibit "A," is hereto
3 attached and made part hereof, as also a copy of the interest coupon first maturing under the terms of said bond, marked Exhibit "B," all of said twenty coupons being of the same tenor, effect, and am't and differing only in number and date of maturity; that thereafter the pl'ff in good faith, before maturity, purchased the said bond with all the said twenty interest coupons thereto attached in open market and for a valuable consideration and became

and now is the *bona fide* owner and holder thereof, except that the fourteen interest coupons first maturing on said bond have been merged in a judgement heretofore obtained by plaintiff against def't; that pl'ff demanded payment at said bank of said bond and said remaining interest represented by the six interest coupons last maturing at the several dates when the same became due and presented and offered to surrender at said bank the several coupons aforesaid, but that payment thereof was refused, and the said
4 bond, coupons, and interest thereon are due and wholly unpaid.

Second. And for further cause of action plaintiff states that on or about the 27th day of March, A. D. 1873, the def't, for a valuable consideration and in compliance with the prouisions of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, duly executed and delivered to some one unknown to pl'ff its certain other negotiable coupon bond of that date, numbered fifteen, for the same amount and in the same words and figures as said bond No. 14 referred to in the previous count (to which reference is hereby made) and differing therefrom only in the number thereof as aforesaid, whereby it promised to pay to the bearer thereof, at the First National Bank in Sioux City, Iowa, at any time on or before March 27, 1883, at its election, the sum of five hundred dollars, with interest at the rate of ten per cent. per annum, payable at said First National Bank, Sioux City, Iowa, semi-annually, on 27th day of March and Sept. in each year, on presentation and surrender
5 of the interest coupons thereto attached, numbered from one to twenty, inclusive; that Exhibit "A," referred to in the first count, is a true copy of said bond excepting the number thereof, and Exhibit " B," therein referred to, is a true copy of said coupons except in the number of the bond which it refers to and the number and date of maturity of said coupons which conform to said bond; that thereafter the plaintiff in good faith, before maturity, purchased the said bond number 15 with all said twenty interest coupons thereto attached in open market and for a valuable consideration and became and now is the *bona fide* owner and holder thereof, except that the 14 interest coupons first maturing in said bond have been merged in a judgement heretofore obtained by pl'ff against def't; that plaintiff demanded payment at said bank of said bond and said remaining interest represented by the six interest coupons last maturing at the several dates when the same became due and presented and offered to surrender at said bank the several
6 coupons aforesaid, but that payment thereof was refused, and that said bond, coupons, and interest thereon are due and wholly unpaid.

Third. And for further cause of action plaintiff states—

That on or about the 27th day of March, A. D. 1873, the defendant, for a valuable consideration and in compliance with the provisions of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, duly executed and delivered to some one unknown to pl'ff its certain other negotiable coupon bond of that date, numbered sixteen, for the same amount and in the same words and figures as

said bond No. 14 referred to in the first count (to which reference is hereby made) and differing therefrom only in the number thereof as aforesaid, whereby it promised to pay to the bearer thereof, at the First National Bank in Sioux City, Iowa, at any time on or before March 27th, 1883, at its election, the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per an-
7 num, payable at said First National Bank, Sioux City, Iowa, semi-annually, on the 27th day of March and Sept. in each year, on presentation and surrender of the interest coupons thereto attached, numbered from one to twenty, inclusive; that Exhibit "A," referred to in the first count, is a true copy of said bond excepting the number thereof, and Exhibit "B," therein referred to, is a true copy of said coupons except in the number of the bond to which it refers and the number and date of maturity of said coupons which conform to said bond; that thereafter the pl'ff in good faith, before maturity, purchased the said bond numbered 16 with all the said twenty interest coupons thereto attached in open market for a valuable consideration and became and now is the *bona fide* owner and holder thereof; that plaintiff demanded payment thereof at said First National Bank, Sioux City, Iowa, of said bond and interest represented by said twenty coupons at the several dates when the same became due and presented and offered to
8 surrender at said bank the several coupons aforesaid but that payment thereof was refused, and that said bond, coupons, and interest thereon are due and wholly unpaid.

Fourth. And for further cause of action plaintiff states—

That on or about the 27 day of March, A. D. 1873, the defendant, for a valuable consideration and in compliance with the provisions of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, duly executed and delivered to some one unknown to plaintiff its certain negotiable coupon bond of that date, numbered seventeen, for the same amount and in the same words and figures as said bond No. 14 referred to in the first count (to which reference is hereby made) and differing therefrom only in the number thereof as aforesaid, whereby it promised to pay to the bearer thereof, at the First National Bank in Sioux City, Iowa, at any time on or before March 27th, 1883, at its election, the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum,
9 payable at said First National Bank, Sioux City, Iowa, semi-annually on the 27th day of March and Sept. in each year on presentation and surrender of the interest coupons thereto attached, numbered from one to twenty, inclusive; that Exhibit "A," referred to in the first count, is a true copy of said bond, excepting the number thereof, and Exhibit "B," therein referred to, is a true copy of said coupons, except in the number of the bond to which it refers and the number and date of the maturity of said coupons which conform to said bonds; that thereafter the pl'ff in good faith, before maturity, purchased the said bond number seventeen, with all the said twenty interest coupons thereto attached, in open market for a valuable consideration & became and now is the *bona fide* owner and holder thereof; that pl'ff demanded payment at said

First National Bank, Sioux City, Iowa, of said bond & interest represented by said twenty coupons at the several dates when the same became due and presented and offered to surrender at said bank the several coupons aforesaid, but that payment thereof was
10 refused, and that said bond, coupons, and interest thereon are due and wholly unpaid.

Fifth. And for further cause of action plaintiff states that on or about the 27th day of March, A. D. 1873, the defendant, for a valuable consideration & in compliance with the provisions of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, duly executed and delivered to some one unknown to pl'ff its certain other negotiable coupon bond of that date, numbered eighteen, for the same amount and in the same words and figures as said bond number 14, referred to in the first count (to which reference is hereby made), and differing therefrom only in the number thereof as aforesaid, whereby it promised to pay to the bearer thereof at the First National Bank at Sioux City, Iowa, at any time on or before March 27th, 1883, at its election, the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum, payable to said First National Bank, Sioux
11 City, Iowa, semi-annually, on the 27th day of March and Sept. in each year, on presentation and surrender of the interest coupons thereto attached, numbered from one to twenty, inclusive; that Exhibit "A," referred to in the first count, is a true copy of said bond, excepting the number thereof, and Exhibit "B," therein referred to, is a true copy of said coupon, except in the number of the bond to which it refers and the number and date of maturity of said coupons which conform to said bond; that thereafter the pl'ff in good faith, before maturity, purchased the said bond number 18, with all the said twenty interest coupons thereto attached, in open market and for a valuable consideration and became and now is the *bona fide* owner and holder thereof; that plaintiff demanded payment at said First National Bank, Sioux City, Iowa, of said bond and interest represented by said twenty coupons at the several dates when the same became due and presented and offered to surrender at said bank the
12 several coupons aforesaid, but that payment thereof was refused, and that said bond, coupons, and interest thereon are due and wholly unpaid.

Wherefor- pl'ff prays judgment against said def't for the sum of five thousand eight hundred and sixty-five $\frac{31}{100}$ dollars ($5,865.31), with ten per cent. interest thereon from and after the 27th day of March, 1884, being the amount, principal and interest, due on said five bonds and the coupons belonging thereto, not including the twenty-eight coupons merged in judgment as before stated.

ROBINSON, POWERS & LACY AND
E. M. CARR, *Atty's for Plaintiff.*

13 EXHIBIT "A."

$500. UNITED STATES OF AMERICA. No. 14.

STATE OF IOWA, }
County of Lyon. }

The Independent School Dist. of Riverside, for value received, promises to pay to —— —— or order, at the First National Bank in Sioux City, Iowa, on the 27th day of March, 1883, or at any time before that date, at the pleasure of the Independent School District, the sum of five hundred dollars, with interest, at the rate of ten per cent. per annum, payable at the First National Bank, Sioux City, Iowa, semi-annually, on the 27th day of March and Sept. in each year, on presentation and surrender of the interest coupons hereto attached. This bond is issued by the board of directors of said Independent School District under the provisions of chapter 98 of the Acts of the 12th General Assembly of the State of Iowa and in conformity with a resolution of said board dated the 26th day of March, 1873.

In testimony whereof the said dist, by its board of directors, has caused this bond to be signed by the president of the board and attested by the treasurer this 27th day of March, 1873.

JUSTUS N. MARTIN, *President.*

S. G. MARTIN, *Treasurer.*

14 $25. EXHIBIT "B."

The treasurer of the Independent School District of Riverside, Iowa, will pay the holder hereof, on the 27th day Sept., 1873, at First National Bank, Sioux City, Iowa, twenty-five dollars for interest on bond No. 14, issued under provision of chapter 98 of Acts of 12th General Assembly of Iowa.

JUSTUS N. MARTIN, *President.*

S. G. MARTIN, *Treasurer.*

15 And afterwards, to wit, on the 7th day of October, A. D. 1884, there was filed in this court a motion in words and figures following, to wit:

Motion.

United States Circuit Court, Northern Dist. of Iowa, Western Division.

ELEANOR NISBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Def't. } Motion.

The above-named def't, by S. M. Marsh and O. J. Taylor, its att'ys, makes motion that pl'ff be required to seperate her petition into

counts and set forth in *a* separate and distinct counts, numbered consecutively, the various separate causes of action contained in pl'ff'- petition, and for grounds shows the court that pl'ff has embraced a large number of causes of action in *his* petition upon written contracts in a separate count.

II. T-at pl'ff be required to attach to her petition copies of each of the written instruments sued on, and for grounds of such
16 motion shows the court that pl'ff brings suit upon a large number of written contracts, and copies of only a few thereof are attached to the petition.

S. M. MARSH,
O. J. TAYLOR,
Att'ys for the Independent District of Riverside.

And thereupon, at the regular October term, A. D. 1884, of said court, on the second day thereof, the following entry appears of record, to wit:

United States Circuit Court, Northern District of Iowa, Western Division.

ELEANOR NESBIT
vs.
THE INDEPENDENT DISTRICT OF RIVERSIDE, in the Co. of Lyon. } No. 70. Law.

And now at this time, to wit, Oct. 8th, 1884, this cause coming on to be heard, upon the motion of defendant to require plaintiff to divide *his* petition into counts and to attach copies of the instruments sued on, the parties hereto appear, by counsel, and thereupon the defendant withdraws *his* said motion, and, on application of counsel, it is the order of — court that the defendant herein
17 has until Jan'y 15th, 1885, in which to file its answer, and the plaintiff is given until April 1st, 1885, in which to file motion or plead, and this cause is thereupon continued.

And afterwards, to wit, on the 5th day of January, 1885, there was filed in this court an answer in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA:

In the Circuit Court of the U. S. in and for the Northern Dist. of Iowa, Western Division.

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Def't. } At Law. Answer.

For answer to the pl'ff's petition and each count thereof def't denies each and every allegation of fact in said petition and the

various counts thereof alleged except what is herein admitted. Defendant admits that this def't is a corporation, and the pl'ff claims herein over $500.00, exclusive of costs, and that the claim is
18 unpaid. As to the allegations in said petition and the various counts thereof that the instruments sued on were sold in open market and purchased, as in the petition set forth, def't has not knowledge or information sufficient to form a belief, and therefor- denies the same.

Further answering, def't says that the instruments sued on, the pretended bonds and the interest coupons set forth, are wholly without consideration, without any authority whatsoever, fraudulent, illegal, and void.

That said district never had or received any money or valuable thing whatsoever in consideration for said bonds and coupons, and the same are wholly without any consideration whatever, whereby there is a failure and total want of consideration for said bonds.

Further answering, def't says that said district was created and became a corporation on or about October, 1872; that as such said dist. could not become indebted in any manner or for any purpose to an amount in the aggregate exceeding five per centum *in the* on the taxable property within said
19 corporation as ascertained by the last State and county tax-list previous to the incurring of said indebtedness; that the taxable property in the limits constituting said dist. for the year 1872 was $51,426.94, and the taxable property in said dist. for the year 1873 was $68,307.01, and the maximum amount in the year 1873 for which said dist. could legally incur indebtedness was the sum of $2,071.34, or on the tax-list of 1873 $3,415.35, being five per cent. of all the taxable property in said dist. as ascertained by the last State and county tax-list; that instruments purporting to be coupon-interest bonds for the year 1873 of the same series, kind, and character of the coupon-interest bonds mentioned in pl'ff'- petition, a portion of which bonds being those sued on by pl'ff and issued the same as those issued by the pl'ff, were put out and circulated to the amount of over $225,000.00; that at no time since said date, including the year 1883, has the taxable property of said dist. exceeded the sum of $71,824.00; that there is now outstand-
20 ing against said district, other than the series of bonds, to the amount of over $100,000.00, also judgments against said dist. of over $10,000.00, the exact amount of which def't cannot now state; wherefore def't says said bonds and coupons sued on by pl'ff are illegal and the pl'ff ought not to recover as prayed.

Further answering, def't says that the directors of said dist. never submitted to the voters of said dist. at any time whatever the question of issueing said pretended bonds in any manner whatever, nor was the question ever voted upon by the electors of said district. The directors of said dist. never issued said bonds or in any manner direct*ing* the issueing of said bonds, nor passed any resolution therefor, nor was said dist. ready to erect nor had said dist. erected or in any part completed any school-house for which said bonds were issued, nor were said bonds in fact issued for the purpose of redeem-

ing outstanding bonds or erecting or building a school-house or for any legal purpose whatever; that said instruments sued on
21 are wholly without authority in fact or in law for the issueing of the same; wherefore the pl'ff ought not to recover.

Further answering, def't says that said bonds of 1873 are illegal and of no effect for the further reasons following: That in 1873 one S. G. Martin was treasurer and one J. N. Martin secretary of said district; that without any consideration whatever, without authority of any kind whatever, but illegally and with intent to defraud, the said S. G. Martin and J. N. Martin from time to time wrote up and signed and caused to be written up & signed the said pretended bonds of said district of 1873 issue, by secretly and by stealth, without the knowledge or authority of the directors and without any resolution therefor or vote of the electors upon the issueing of said bonds; that there is not and never has been any record thereof in the minutes, proceedings, or records of the said district of said bonds or the issueing of the same or any registration thereof whatever.

22 That said bonds were not sold or delivered by the directors of said dist. or by their authority or with their knowledge to any one whomsoever, but were delivered by said S. G. Martin and J. N. Martin to diverse persons from time to time for the purpose and with the intent to defraud def't and various persons to the def't unknown; of all which and the illegal character of said bonds the pl'ff had notice before she had -ve- received the said bonds.

Further answering, def't alleges the fact to be that said alleged bonds are not duly signed by the president and countersigned by the treasurer of said dist.

Further answering, def't says that the signatures to the particular bonds & coupons of 1873, set forth in p'ff'- petition and the various counts thereof, are not the true and genuine signatures of S. G. Martin and J. N. Martin.

S. M. MARSH,
O. J. TAYLOR,
Att'ys for Def't.

23 And afterwards, to wit, on the 1st day of April, 1885, there was filed in this court a demurrer to answer in words and figures following, to wit:

Demurrer to Answer.

In the United States Circuit Court, Northern Dist. of Iowa, Western Division.

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Def't.
} Demurrer to Answer.

1st. The pl'ff demurs to the 2d division of def't's answer (that is, to that division first preceded by the words "Further answering")

on the ground that the only allegation of fact therein stated is that def't failed to receive any consideration for said bonds & coupons, and pl'ff says that such failure of consideration is not sufficient to constitute a defense to plaintiff's action.

II. That said division fails to show that plaintiff is not a *bona fide* holder and purchaser for value before maturity of said bonds
24 & coupons, and therefore not affected by the matters set up as a defense in said division.

II.

The plaintiff demurs to the 3d division of said answer on the ground that the allegations thereof do not constitute a sufficient defense in this, that it is not alleged or shown therein that at the time of issuance of the bonds and coupons in suit the alleged five per cent. limitation and *on* indebtedness had been reached or that the issuance of said bonds in suit was in excess of said five per cent. limitation.

III.

Plaintiff demurs to the 4th division of the answer on the grounds that the allegation of facts therein do not constitute a defence in this, that it is not shown therein that pl'ff is not a *bona fide* holder and purchaser for value of said bonds and coupons before maturity, and pl'ff says that def't is concluded and estopped by the recitals in said bonds from setting up as a defence the matters alleged in said division of the answer.

IV.

Plaintiff demurs to the 6th division of the answer on the
25 ground that the same does not constitute a sufficient defense in this, that said division contains no denials nor allegations of facts, but only contains a statement of opinion or legal conclusion as to whether said bonds are duly signed.

E. M. CARR AND
POWERS & LACY,
Att'ys for Plaintiff.

And thereupon, at the regular May term, A. D. 1885, of said court, on the first day thereof, the following record appears of record, to wit:

United States Circuit Court, Northern Dist. of Iowa, Western Division.

ELEANOR NESBIT
vs.
IND. SCHOOL DIST., RIVERSIDE. } No. 70. Law.

And now, at this time, to wit, May 12th, 1885, this cause coming on to be heard upon the demurrer of plaintiff to defendant's answer, the same is confessed by defendent, and, on application of counsel, leave is granted by the court to file amendment to answer.

And afterwards, to wit, on the 12th day of May, 1885,
26 there was filed in this court an amendment to answer in the words and figures following, to wit:

Amendment to Answer.

In the United States Court, Northern District of Iowa, Western Division.

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Def't.
} Amendment to Answer.

The def't, by leave of the court first had and obtained, amends the answer herein as follows:

1st. Add to the first division of said answer the following reason of said series of bonds of 1873 alone, in addition to other indebtedness then existing, many times exceeding the said five per cent. constitutional limitation: that on or about the 3d day of Oct., 1872, said dist. was organized; that prior to said 3d of Oct., 1872, The Independent Dist. of Riverside, def't herein, had constituted and formed one of the sub-districts of the dist. township of Rock, in the county of Lyon, Iowa, a corporation duly organized under the laws of Iowa for school purposes; that prior to the 3d day of Oct., 1872, the indebtedness of said dist. township had far exceeded the
27 five per cent. constitutional limitation shown by the last State and county tax-lists prior to said 3d day of October, 1872, and that the said dist. township had no assets out of which said indebtedness could be paid, and that the indebtedness for which the said Independent Dist. of Riverside was and remained liable at the date of the bonds & coupons sued on hereafter exceeded five per cent. of the assessed value of the taxable property situated within the limits of the said Independent District of Riverside, as shown by the last State and county tax-lists, prior to issueing said bonds, the exact amount of which assessed value and am't of which indebtedness def't cannot now set forth.

That said Independent Dist. of Riverside had not any and still has not any assets out of which to pay the same; that the alleged indebtedness sued on herein is void; that at the alleged issuing of the same def't was indebted as aforesaid in an amount exceeding five
28 per cent. of the taxable property in said dist., as ascertained by the last State and county tax-lists.

2d. Add to the fifth division the following, to wit: Not only the matters and defenses in this division of the answer, but also had notice of the matters and defenses in each and every division of this answer set forth and alleged.

3d. Strike out the sixth division of said answer.

S. M. MARSH AND
O. J. TAYLOR,
Att'ys for Def't.

STATE OF IOWA, *Woodbury Co.*, } ss:

I, Andrew J. Baily, being first duly sworn, upon oath depose and say that I am the identical Andrew J. Baily who verified the answer filed herein, at which time I was president of the Independent School District of Riverside; that since said date the said district has been divided, and that part of said territory now composes the Independent District of Jackson; that I am president of said last-named district; that I have heard read the within amend-
29 ment to said answer; that I have lived in said territory comprising said district most of the time since 1873, and have made diligent inquiry and investigation regarding the matters herein set forth & alleged, and that the allegations herein contained in the amendment are true, as I verily believe.

A. J. BAILEY.

Subscribed and sworn to before me and in my presence by the said A. J. Bailey on this 12th day of May, 1885.

T. G. HENDERSON,
[SEAL.] *Notary Public in & for Woodbury Co., Iowa.*

And thereupon, at the regular May term, A. D. 1885, of said court, on the 4th day thereof, the following entry appears of record, to wit:

ELEANOR NESBIT
vs.
THE INDEPENDENT SCHOOL DISTRICT OF RIVERSIDE, in Lyon County, Iowa. } No. 70. Law.

And now, at this time, to wit, May 15th, 1885, on motion of counsel, it is the order of court that plaintiff have thirty days from this date in which to file reply to defendant's amended answer.

30 And afterwards, to wit, on the 12th day of June, 1885, there was filed in this court a reply in the words and figures following, to wit:

Reply.

In the U. S. Circuit Court, Northern Dist. of Iowa, Western Division

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the Co. of Lyon, Def't. } Reply.

1. Now comes a pl't'ff and, for a reply to def't's answer and amendment thereto and to each and every division thereof, denies each and every allegation therein contained except the admissions therein.

2d. And, for a further reply to said answer and amendment thereto and in addition to the denial of the allegations thereof, pl'ff states that heretofore this pl'ff brought an action against said def't in the

circuit court of the United States for the dist. of Iowa upon certain of the interest coupons attached to some of the identical bonds sued upon in the present action, all of which bonds are of the same
31 series and issued at the same time and under the same circumstances, and that the same defenses now plead by defendant and each and every one of said defenses could have been plead by def't as a defense in said former action and were so plead as a defense therein, and were in said action upon trial thereof adjudicated upon adversely to defendant, and a judgment was rendered in favor of this pl'ff and against said def't in said former action on the 21st day of Oct., 1881, at Des Moines, for the full amount of the coupons therein sued upon; and plaintiff says that by reason of said former adjudication between the same parties and upon the same issues the def't is barred and esstopped from relitigating each and all of the defenses now plead in this action.

E. M. CARR AND
POWERS & LACY,
Att'ys for Plaintiff.

32 And afterwards, to wit, on the 6th day of October, 1885, there was filed in this court a "motion to make more specific," in the words and figures following, to wit:

ELEANOR NESBIT
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in Lyon County, Iowa. } Motion to Make More Specific.

The def't shows the court that the second division of pl'ff's reply, filed herein, alleges a former adjudication of the matters and defenses in the answer set forth in a former suit between the parties hereto, but fails to state definit-ly what matters were adjudicated or to set forth an exemplification or transcript of such former cause.

Wherefor- def't moves that pl'ff be required to attach to his said reply, as a part thereof, an exemplification of transcript of such former cause.

S. M. MARSH,
O. J. TAYLOR,
Att'ys for Def't.

33 And afterwards, to wit, on the 7th day of October, 1885, there was filed in this court a stipulation & waiver of trial to jury; which said waiver was in words & figures following, to wit:

I hereby certify that said waiver is missing from the files in my office, and I am unable to obtain the same for the purpose of making a transcript thereof, but that said paper was duly filed in my office as one of the papers in this case.

J. H. BOLTON,
Deputy Clerk.

34 And afterwards, to wit, on the 8th day of October, 1885, there was filed in this court an amendment to answer in words & figures following, to wit:

In the Circuit Court of the United States, Northern Dist. of Iowa, Western Division.

ELEANOR NESBIT
vs.
THE INDEPENDENT SCHOOL DISTRICT OF RIVERSIDE, IOWA.

The def't, by leave of the court first had and obtained, amends the answer filed herein by adding thereto the following, to wit: That said district, def't herein, at the time of its organization as aforesaid, in Oct., 1872, was and ever has been prohibited by the statutes of the State of Iowa from permitting a greater outstanding indebtedness than an amount equal to five per centum of the last-assessed value of the property of the district; that at the date of issuing the bonds and coupons sued on herein, to wit, 1873, the last-assessed value of the property of the said dist. was $68,307.01, and that five per centum thereof is the maximum amount of which the
35 said dist. then could legally permit an indebtedness, to wit, $3,715.30; that at said date of issuing the bonds and coupons sued on herein said dist. had permitted and had outstanding an indebtedness and obligations to the amount of over and above the amount aforesaid, and that also in addition to the amount aforesaid instruments purporting to be coupon interest bonds of the year 1873, of the same series, kind, and character of the coupon interest bonds mentioned in pl'ff's petition, a portion of which bonds being those sued on by pl'ff, were put out and circulated to the amount of over $225,000; wherefore def't says that in the addition to the defence of the constitutional limitation of five per cent. as ascertained by the last State and county tax-lists, as heretofore plead herein, said bonds & coupons sued on herein are in excess of the State statutes' five per cent. limitation as ascertained by the last assessed value of the property of the district, and are illegal and void; of all which
36 and the illegal character of said bonds plaintiff had knowledge and stood charged at the time plaintiff had and received the same.

S. M. MARSH &
O. J. TAYLOR,
Att'ys for Def't.

STATE OF IOWA, *Woodbury Co.*, } *ss:*

I, A. J. Bailey, being duly sworn, on oath depose and say that I am president of the Independent Dist. of Jackson, and that I have heard read said amendment foregoing and know the contents thereof, and that the statement and allegations therein contained are true, as I verily believe; that the def't, The Independent District of Riverside, has been divided into two districts, to wit, the Independent District of Allison and the Independent District of Jackson; that I

was also president of the said Independent District of Riverside at the time of said division.

A. J. BAILEY.

Subscribed and sworn to before me, J. H. Bolton, d'p'ty clerk
37 of the U. S. circuit court, northern district of Iowa, western division.

J. H. BOLTON,
[SEAL.] *D'p'ty Cl'k, U. S. Dist. Court.*

And afterwards, to wit, on the 8th day of October, 1885, there was filed in this court a reply to amendment to answer in words and figures following, to wit:

U. S. Circuit Court of Iowa, Northern Dist. of Iowa, Western Division, October Term, A. D. 1885.

ELEANOR NESBIT, Pl'ff,
vs.
THE INDEPENDENT DIST. OF RIVERSIDE, in the County of Lyon, Defendant.

Reply to Amendment to Answer.

Now comes said pl't'ff and for reply to the def't's amendment to its answer renews each and every allegation of pl'ff's original reply herein and of each division of said reply.

POWERS & LACY AND
E. M. CARR,
Att'ys for Plaintiff.

38 And thereupon, at the regular October term, A. D. 1885, of said court, on the third day thereof, the following appears of record:

United States Circuit Court, Northern Dist. of Iowa, Western Division.

ELEANOR NESBIT
vs.
THE INDEPENDENT SCHOOL DISTRICT OF RIVERSIDE, Lyon Co. } No. 70. Law.

And now, at this time, to wit, Oct. 8th, 1885, this cause coming on for trial, the plaintiff appears by her attorneys, Powers, Lacy & Carr, and defendant appears by its attorneys, S. M. Marsh, O. J. Taylor, and J. H. Swan; and thereupon, plaintiff's motion to make reply more specific being waived and the parties thereto having filed stipulation of waiver of their rights of trial to a jury, this cause is submitted to the court, and the court, having heard the evidence introduced and the argument of counsel, takes this cause under advisement.

39 And afterwards, to wit, on the 28th day of November, A. D. 1885, there was filed in this court special findings of fact in words and figures following, to wit:

ELEANOR NESBIT, Plaintiff,
vs.
THE INDEPENDENT DISTRICT OF RIVERSIDE, in the County of Lyon, Defendant.
} October Term, A. D. 1885.

Special Finding of Facts.

The above-named parties having filed with the clerk a written waiver of jury and consent to trial to the court, and said action having been tried to the court at a former day of the present October term, A. D. 1885, of this court, and the case taken under advisement, now, on this 28th day of November, A. D. 1885, being still of said October term, the court, being prepared to announce the decision in said case in accordance with the request made by the parties at the trial, makes the following special findings of fact upon which the judgment herein is based:

1st. The Independent School District of Riverside was organized in October, 1872, the territory embraced therein having previously formed part of the district township of Rock.

40 2nd. The value of the taxable property within the boundaries of the Independent district, as shown by the State and county tax-lists, was for the year 1872 forty-one thousand four hundred & twenty-six dollars, and for the year 1873 sixty-eight thousand three hundred and seven dollars.

3d. That on the 26th and 27th days of March, 1873, the indebtedness of said Independent district, exclusive of the bonds declared on in this action, exceeded the sum of thirty-five hundred dollars.

4th. That the bonds sued on in this action bear date March 27, 1873, maturing ten years thereafter, are five in number, for five hundred dollars each, or $2,500.00 in the aggregate, exclusive of interest, are numbered 14, 15, 16, 17, and 18, and that the signatures thereon are the genuine signatures of the officers of the district purporting to sign the same, and that said bonds, with the accrued interest, now amount to the sum of five thousand six hundred and ninety-five dollars, which bonds and interest coupons were produced in evidence by plaintiff. The said

41 bonds and interest coupons are in all respects alike except as to number, and each coupon refers to the number of the bond to which it belongs and to said act under which it was issued. All of said bonds contain the following provision in the body thereof: This bond is issued by the board of directors of said Independent school district under the provisions of chapter 98 of the Acts of the Twelfth General Assemby of the State of Iowa and in conformity with a resolution of said board dated the 26th day of March, 1873. A copy of the act referred to is printed on the back of the bonds. The exhibits attached to plaintiff's petition are correct copies of said bonds & coupons.

4½th. That all of said five bonds and the coupons attached belong

to the same series and were issued at the same time, under the same circumstances, and part of the same transaction.

5th. That the plaintiff, who is a citizen of Great Britain, bought these bonds and all the interest coupons belonging thereto as an investment from one Henry Hutchinson on the 20th day of December, 1877, paying him therefor the sum of two thousand dol-
42 lars; that said plaintiff, when she made such purchase, had no other knowledge concerning the bonds or of the facts connected with their issuance than she was charg-able with from the bonds themselves and from the provisions of the constitution and laws of the State of Iowa.

6th. That said bonds were issued without consideration.

7th. That plaintiff brought suit in the U. S. circuit court at Des Moines, Iowa, against the said Independent District of Riverside upon certain of the interest coupons belonging to the bonds Nos. 14 and 15, being two of the bonds included in the present action, and in the petition in that cause filed the plaintiff averred that she was the owner of the two bonds Nos. 14 and 15 and the coupons thereto attached, and asked judgment upon the six coupons then due and unpaid. To this petition the defendant answered that at the time the bonds were issued the indebtedness of the district exceeded five per cent. of the taxable property of the district, as shown by the State and county tax-lists, and that the bonds were, therefor-,
43 void under the provision of the constitution of the State of Iowa; that no legal or proper election upon the question of issuing the bonds was held; that the bonds were issued under the pretense of building a school-house with the proceeds thereof, but the same has not been built nor was it intended that it should be built; that the district received no consideration for the bonds, and that the same are fraudulent and void; that plaintiff is not a *bona fide* holder of said bonds.

The case was tried to the court and judgment was rendered in favor of plaintiff for the full amount of the six coupons declared on in that cause. It is shown by evidence *aliunde* that the five bonds bought by plaintiff were in possession of plaintiff's counsel at the trial of the action at Des Moines, and that bonds Nos. 14 and 15 were actually produced and exhibited to the court at such trial and offered in evidence. It is not shown that at such trial the fact that plaintiff had bought and was the owner — bonds Nos. 16,
44 17, and 18 was made known to the court. The judgment entry in said cause shows that on that trial it appeared from the evidence that when said bonds Nos. 14 and 15 were issued the indebtedness of the district, exclusive of these bonds, exceeded the constitutional limitation of five per cent; that the judges trying said cause were divided in opinion upon the question whether the recitals in the bond estopped the defendant from showing this fact against plaintiff and certified a division of opinion on this question, judgment being rendered in favor of plaintiff. It does not appear that the cause was taken to the supreme court upon the question certified.

8th. Under the statutes of Iowa, in force in 1872 and 1873, regu-

lating the assessment of property for the purpose of State and county taxation the lists thereof could not be computed before the month of August, and in March, 1873, when these bonds were issued, the last computed tax-list was for the year 1872. Plaintiff on the trial objected to all the testimony tending to show that the bonds
45 in question were in excess of the constitutional or statutory limitation on the ground that defendant was estopped from showing the same by the recitals in the bonds, and, such objection being overruled, plaintiff at the time duly excepted to such ruling.

As a conclusion of law based on such facts the court finds that plaintiff is not entitled to recover, and that defendant should have judgment for costs. Plaintiff objects on the ground that the facts found are not sufficient to support such judgment and excepts thereto, and the foregoing findings and exceptions are ordered filed and made matter of record.

(Signed) O. P. SHIRAS, *Judge.*

46 And thereupon, at the regular October term, A. D. 1885, of said court, on the eleventh day thereof, the following entry appears of record, to wit:

Final Judgment of Court.

United States Circuit Court, Northern District of Iowa, Western Division.

ELEANOR NESBIT
v.
THE INDEPENDENT DISTRICT OF RIVERSIDE, in the County of Lyon. } No. 70. Law.

This cause having been tried and submitted at a former day of the present October term, A. D. 1885, and taken under advisement, the court, being now fully advised in the premises, has, on this 28th day of November, A. D. 1885, being still of said October term, filed its special findings of facts, and, based upon such special findings, holds pl'ff is not entitled to recover.

Wherefore it is ordered and adjudged that defendant have and recover judgment for costs against plaintiff, taxed at one hundred eighty-nine & $\frac{53}{100}$ dollars, and have execution therefor; to which holding and judgment plaintiff excepts.

O. P. SHIRAS, *Judge.*

47 And afterwards, to wit, on the 28th day of November, 1885, there was filed in this court the following opinion of court in words and figures following, to wit:

In United States Circuit Court in & for Northern Dist. of Iowa, Western Division, October Term, 1885.

ELEANOR NESBIT
vs.
INDEPENDENT SCHOOL DISTRICT OF RIVERSIDE. } Law.

Powers & Lacy, E. M. Carr, for plaintiff; S. M. Marsh, O. J. Taylor, for defendant.

SHIRAS, *J.:*

By consent of parties this cause was tried to the court, a jury being waived. From the evidence I find the following facts:

1st. The Independent School District of Riverside was organized in October, 1872, the territory being embraced therein having previously formed part of the district township of Rock.

48 2d. The value of the taxable property within the boundaries of the Independent district, as shown by the State and county tax-lists, was for the year 1872 forty-one thousand four hundred and twenty-six dollars, and for the year 1873 sixty-eight thousand three hundred and seven dollars.

3d. That *the* on the 26 & 27 days of March, 1873, *in* indebtedness of said Independent district, exclusive of the bonds declared on in this action, exceeded the sum of thirty-five hundred dollars.

4th. That the bonds sued on in this action bear date March 23, 1873, are five in number, five hundred dollars each, or twenty-five hundred dollars in the aggregate, exclusive of interest, are numbered 14, 15, 16, 17, and 18, and that the signatures thereto are the genuine signatures of the officers of the district purporting to sign the same, and that the said bonds, with the accrued interest, now amount to the sum of five thousand six hundred and ninety-five dollars.

5th. That the plaintiff, who is a citizen of Great Britain,
49 bought these bonds as an investment from one Henry Hutchinson on the 20th day of December, 1877, paying him therefor the sum of two thousand dollars; that said plaintiff when she made such purchase had no other knowledge concerning the bonds or the facts connected with their issuance than she was charg-able with from the bonds themselves, and from the provisions of the constitution & laws of the State of Iowa.

6. That said bonds were issued without consideration, and, as against the Independent district, are invalid and void.

7th. That plaintiff brought suit in the U. S. circuit court at Des Moines, Iowa, against the said Independent District of Riverside upon certain of the interest coupons belonging to bonds Nos. 14 & 15, being two of the bonds included in the present action, and in the petition in that cause filed the pl'ff averred that she was the owner of the two bonds Nos. 14 and 15 and the coupons thereto attached, and asked judgment upon the six coupons then due and unpaid. To this petition the
50 def't answered that at the time the bonds were issued the indebtedness of the district exceeded five per cent. of the taxa-

ble property of the dist., as shown by the State and county tax-lists, and the bonds were therefor- void under the provisions of the constitution of the State of Ia.; that no legal or proper election upon the question of issuing the bonds was held; that the bonds were issued under the pretense of building a school-house with the proceeds thereof, but that the same has not been built nor was it intended that it should be built; that the district received no consideration for the bonds, and that the same are fraudulent and void; that plaintiff is not a *bona fide* holder of said bonds. The case was tried to the court and judgment was rendered in favor of plaintiff for the full amount of the six coupons declared on in that cause. It is shown by evidence *aliunde* that the five bonds bought by pl'ff were in possession of pl'ff's counsel at the trial of the action
51 at Des Moines, and that bonds Nos. 14 and 15 were actually produced and exhibited to the court at such trial. It is not shown that at such trial the fact that plaintiff had bought and was the owner — Nos. 16, 17, and 18 was made known to the court. The judgment entry in said cause shows that on that trial it appeared from the evidence that when said bonds Nos. 14 and 15 were issued the indebtedness of the dist., exclusive of these bonds, exceeded the constitutional limitation of five per cent.; that the judges trying said cause were divided in opinion upon the question whether the recitals in the bonds estopped the def't from showing this fact against pl'ff and certified a division of opinion on this question, judgment being rendered in favor of plaintiff. It does not appe-r that the cause was taken to the supreme court upon the question certified.

VIII. According to the provisions of the Code of Iowa in force when the bonds in suit were issued the assessors charged with the duty of listing and valu-ing property as the bases for
52 the levy of the State and county taxes were required to enter upon the discharge of this duty on the third Monday in January in each year, and they were required to deliver one copy of the assessments made by them to the clerk of the township on or before the first Monday in April. This assessment book or list was for the use of the township trustees as a board of equalization for the township, who were required to meet for that purpose on the first Monday of April and continue in session from day to day until their work was completed.

The assessment next came before the board of supervisors of the county for equa-ization between the townships at the regular meeting in July, and for equalization between the counties, the assessment came before the executive council of the State on the second Monday of July, and this board was required to complete its equalization on or before the first Monday in August, and to forth-
53 with transmit to the county auditors a statement of the percentage to be added to or deducted from the valuation of real property in such county, and the county auditors were required to make the proper additions to or deductions from the valuation. Until these several steps were completed the total amount of tax-

able property for State and county purposes could not be legally known.

From the foregoing facts it follows that in determining the amount of indebtedness which the Independent district could lawfully incur on the 27th day of March, 1873, when the bonds in suit were issued, the calculation must be based upon the assessment for the year 1872, because, according to the provisions of the code then in force, the assessment for 1873 could not be completed until after the first of August.

The amount of taxable property within the district for the year 1873 was $41,426.00, and five per cent. upon this sum would be $2,071.30. When the plaintiff was about to purchase these
54 bond- she was bound to know the am't of indebtedness which the constitution of Iowa imposed upon the district, and she was likewise bound to notice of the amount of taxable property within the district as shown by the State & county tax lists.

Buchanan *vs.* Litchfield, 102 U. S., 278.
Dixon County *vs.* Field, 111 U. S., 83.

In other words, she was bound to know and must be held to have known when these bonds were offered for sale to her, that in March, 1873, the limit of indebtedness which the district could lawfully incur was $2,071.30. As the bonds without interest which she purchased amounted to $2,500.00, she was charged with notice of the fact that the constitutional limitation had been exceeded. Further inquiry would have disclosed the fact that before any of these bonds were issued the limit of lawful indebtedness had been passed, and that no part of the bonds offered for sale were legal and valid. Under such a state of facts it cannot be held that the plaintiff is an innocent purchaser, but, on the contrary, it appears
55 that she bought the bonds under circumstances charging her with illegality thereof.

On part of the plaintiff it is, however, contended that the def't, by reason of the adjudication in the case brought upon the coupons attached to bonds 14 & 15 in the court at Des Moines, is now estopped from asserting that the bonds are illegal & void in the hands of plaintiff; and upon the trial all the evidence introduced by the defendant was objected to by the plaintiff for that reason. In support of this position counsel for plaintiff mainly rely upon the cases of Aurora *vs.* West, 7 Wall., 82, and Beloit *vs.* Morgan, *idem*, 619. In the case of The Geneva National Bank *vs.* Independent District of Riverside, just decided, I have considered these cases in light of the opinion in the later case of Cromwell *vs.* Sac County, 94 U. S., 351, reaching the conclusion that if the cases are not conflicting at least the general statements found in the former cases are greatly modified and restricted in the latter case. According
56 to the doctrine laid down in Cromwell *vs.* Sac County the judgment in the prior case brought at Des Moines upon the coupons attached to bonds 14 & 15 is conclusive so far as those coupons are concerned, and in a second suit between the same parties upon other bonds or coupons belonging to the same series is con-

clusive upon upon all issues which were in fact heard and determined in the former suit.

In effect, what was determined in the former suit between the present parties was that plaintiff was an innocent holder for value of the coupons sued on, and as such was entitled to recover notwithstanding the fact that it appeared from the evidence that the indebtedness of the district exceeded the constitutional limit at the time the coupons sued on were issued. The question upon which the judges were divided in opinion was whether the recitals in the bonds were of such a character as that plaintiff had the right to rely thereon as evidence of the fact that the bonds were within
57 the constitutional limit & therefore valid. It is evident that the decision in that case turned upon the question whether plaintiff was or was not an innocent holder of the coupons sued on, the judgment deciding that she was, according to the ruling in Cromwell *vs.* Sac County. This judgment does not estop the def't from contesting the question whether the pl'ff is an innocent holder of the bonds involved in the present suit.

The present suit is not based upon the same coupons that were declared on in the former action, and in that proceeding the question whether plaintiff was or was not an innocent holder of bonds Nos. 14, 15, 16, 17, & 18 was not involved or determined. The question is therefore open for determination in the present case. The evidence now introduced shows that plaintiff, outside of the recitals of the bonds, was charged with knowledge of a state of facts which conclusively proved that the bonds exceeded the constitutional limit. No matter, therefor-, how clear the recital in the bonds might be, she could not rely thereon in making the purchase
58 because she knew or was charged with knowledge of such a state of facts as precluded the idea that the bonds were within the constitutional limit. In other words, she knew or was bound to know that in March, 1873, the Independent district could not lawfully incur an indebtedness in excess of $2,075.30, and the bonds offered to her for purchase amounted to $2,500.00. This fact was sufficient to put her upon enquiry, and any reasonable enquiry would have disclosed the fact that the district was already indebted to an amount in excess of the legal limit, and that, consequently, the bonds were wholly void. Counsel for pl'ff, in their argument upon the question of the amount of indebtedness due and owing by the district when the bonds in suit were issued, claim that there may have been money enough in the treasury of the district to pay off the existing indebtedness, and that therefore the actual indebtedness may have been within the constitutional limitation,
59 and cite in support thereof the case of Dively *vs.* Cedar Falls, 27 Iowa, 227, in which it was held that if a municipal corporation has the money in its treasury to meet its indebtedness the issue of warrants to the amount of $20,000 or any other sum, however great, over five per cent. of its taxable property would not be a violation of the constitution. In such a case it would not become indebted within the meaning of the clause under consideration. It will be remembered that under the laws of Iowa warrants

are the authority for the payment of money by the treasurer. The money may be in the treasury to meet a given debt, but the creditor must procure a warrant therefor before the treasurer is authorized to make the payment; therefor- the mere fact that certain warrants are drawn in favor of A, B, & C on a given day upon the treasurer of a city or county does not necessarily imply that thereby the indebtedness of the corporation has been increased by the amount of the warrant. Just as the supreme court of Iowa holds in Dively *v.* Cedar Falls, if the money is in the treasury to pay the warrants
60 the drawing of the warrants does not create a debt within the meaning of the constitutional limitation. If, however, bonds are executed, payable ten years after date, these are evidence of an actual indebtedness, not to be paid at once out of money now in the treasury, but to be paid when they mature in the future; and it is questionable whether the same rule is applicable thereto. Thus, if it appeared in a given case that the amount of indebtedness that the district could incur was $10,000 and there was $10,000 in the treasury liable to be used for current expense, and the district should issue $20,000 in bonds, payable in ten years, it would certainly be a grave question whether such an issue would not exceed the limitation of the constitution; but, however this may be, in the case now before the court the defendant put in evidence the secretary and treasurer's books belonging to the district, which was the best evidence obtainable, and from these it did not appear that
61 there was on hand any sum of money applicable to the payment of the outstanding indebtedness. From the entire evidence the court is justified in finding that the actual indebtedness of the district when the bonds were issued exceeded the constitutional limit, and that they are therefore void. Judgment must therefore be entered for the defendant, and it is so ordered.

UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the circuit court of the United States in & for the northern district of Iowa, do hereby certify that the foregoing is a full, true, and perfect transcript of the record and proceedings in the case of Eleanor Nesbit, plaintiff, *vs.* The Independent District of Riverside, in the county of Lyon, defendant, No. 70, law, as fully as the same remain of file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Sioux City, in said district, this 25th day of September, A. D. 1888.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE, *Clerk*,
By J. H. BOLTON, *D'p'ty.*

62 And afterwards, to wit, the 21st day of November, 1887, there was filed with this court a bond in words and figures following, to wit:

Know all men by these presents that we, Henry Hutchinson and Wm. C. Cawley, are held and firmly bound unto the Independent District of Riverside, in the county of Lyon, in the full and just sum of five hundred ($500.00) dollars, to be paid to the said The Independent District of Riverside, in the county of Lyon, its certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 27th day of October, in the year of our Lord one thousand eight hundred and eighty-seven. Whereas lately, at a session of the circuit court of the United States for the northern district of Iowa, western division, in a suit depending in said court between Eleanor Nesbit and the Independent District of Riverside, in the county of Lyon, a final judgment was rendered against the said Eleanor
63 Nesbit; and the said Eleanor Nesbit having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said The Independent District of Riverside, in the county of Lyon, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Eleanor Nesbit shall prosecute said writ of error to effect and answer all costs if the said Eleanor Nesbit fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY HUTCHINSON. [SEAL.]
WM. C. CAWLEY. [SEAL.]

Sealed and delivered in presence of—
Witnesses:
C. E. SMITH.
F. H. PAUL.

Approved by—
O. P. SHIRAS, *Judge.*

64 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the northern district of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between Eleanor Nesbit, plaintiff, and The Independent District of Riverside, in the county of Lyon, defendant, a manifest error hath happened, to the great damage of the said Eleanor Nesbit, as by her complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Seal of Circuit Court U.S., Northern District of Iowa, Sioux City.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 19th day of November, A. D. 1887.

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern District of Iowa.

Allowed.
O. P. SHIRAS, *Judge.*

65 [Endorsed:] No. 70. Law. Eleanor Nesbit, plaintiff, *vs.* The Independent District of Riverside, in the county of Lyon, defendant. Filed Nov. 21st, 1887. A. J. Van Duzee, cl'k, by J. H. Bolton, d'p'ty. Writ of error.

66 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Independent District of Riverside, in the county of Lyon:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the United States circuit court for the northern district of Iowa, western division, wherein you are defendant in error and Eleanor Nesbit is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Dubuque, in said district, this 19th day of November, 1887.

O. P. SHIRAS, *Judge.*

67 [Endorsed:] No. 70. L. Eleanor Nesbit, plaintiff in error, *vs.* The Independent District of Riverside, in the county of Lyon, def't in error. Citation. Filed Nov. 25th, 1887. A. J. Van Duzee, cl'k, J. H. Bolton, d'p'ty.

This writ came into my hands for service Nov. 22d, 1887, and on the same day I served the same upon S. M. Marsh, attorney of record for the defendant in error herein named, by reading the same to him and by delivering to him a true copy thereof.

Done at Sioux City, in the western division of the northern dist. of Iowa.

W. M. DESMOND, *U. S. Marshal*,
By MATT. L. FLINN, *Deputy*.

Fees:

Service	2 00
Copy	1
Mileage	12
	3 12

68 *Assignment of Errors.*

To the Supreme Court of the United States:

Eleanor Nesbit comes now and says that in the record and proceedings, as also in the rendition of the judgment, in the case of Eleanor Nesbit, as plaintiff, against the Independent District of Riverside, in the county of Lyon, as defendant, in the circuit court of the United States for the northern district of Iowa, western division, there was manifest error, and the said Eleanor Nesbit assigns error therein as follows, to wit:

First.

She assigns as error that the facts appearing on the trial of said case, as shown by the special finding of facts made and filed by said circuit court, were not and are not sufficient to support the judgment rendered thereon.

Second.

She assigns as error that said circuit court erred in its conclusion of law (based on said special finding of facts) that plaintiff was not entitled to recover, and that defendant should have judgment for costs.

Third.

She assigns as error that said circuit court erred in not rendering a judgment upon said special finding of facts in favor of said plaintiff, Eleanor Nesbit.

Fourth.

She assigns as error that said circuit court erred in determining by its judgment, based on said special finding of facts, that the former adjudications therein referred to did not estop the said defendant from contesting the question whether the said plaintiff, Eleanor Nesbit, was an innocent holder of the bonds involved in this action.

Fifth.

She assigns as error that the said circuit court erred in determining by its judgment, based on said special finding of facts, that

the said defendant was not estopped by the former adjudication plead in the reply and referred to in the 7th finding of the court.

Sixth.

She assigns as error that the said circuit court erred in determining by its judgment, based on said special finding of facts, that the said defendant was not estopped by the recitals in the bonds.

Seventh.

She assigns as error that said circuit court erred in overruling the objection made by said plaintiff, Eleanor Nesbit, to all testimony tending to show that the bonds in question were in excess of the constitutional or statutory limitation, on the ground that said defendant was estopped from showing the same by the recitals in the bonds.

69 Eighth.

She assigns as error that the said circuit court erred in determining by its judgment, based on said special finding of facts, that the plaintiff, Eleanor Nesbit, was not an innocent holder of the bonds in suit.

Ninth.

She assigns as error that the said circuit court erred in determining by its judgment, based on said special finding of facts, that said bonds in question were issued in excess of the constitutional or statutory limitation of indebtedness when said defendant failed to show that there was not sufficient money in its treasury to reduce its indebtedness below such constitutional and statutory limit.

And the said Eleanor Nesbit prays that the errors may be considered and corrected and the judgment aforesaid reversed, annulled, and altogether held for naught, and that the case may be remanded to the said circuit court with direction to enter a judgment for plaintiff for the full amount of the bonds and interest.

POWERS & LACY,
J. B. POWERS,
B. W. LACY,
WESTEL WILLOUGHBY,
Attorneys and of Counsel for Eleanor Nesbit.

70 [Endorsed:] 70. Law. Eleanor Nesbit *vs.* The Independent District of Riverside, in the county of Lyon. Assignment of errors. Filed Sept. 21st, 1888. A. J. Van Duzee, cl'k, by J. H. Bolton, d'p'ty.

71 *Prayer for Reversal.*

To the Supreme Court of the United States:

Now comes Eleanor Nesbit and says that in the record and proceedings, as also in the rendition of judgment, in the case of Eleanor

Nesbit, as plaintiff, against The Independent District of Riverside, in the county of Lyon, as defendant, in the circuit court of the United States for the northern district of Iowa, western division, manifest error has happened, to the great damage of the said Eleanor Nesbit, and the said Eleanor Nesbit hath thereupon sued out a writ of error that the record and proceedings may be sent to the Supreme Court of the United States, to the end that error may be corrected and justice done:

Now, therefore, the said Eleanor Nesbit, as plaintiff in error, prays for the correction of such error and for reversal of said judgment and that the case may be remanded to the said circuit court with direction to enter judgment in favor of this plaintiff for the full amount of the bonds and coupons in suit.

POWERS & LACY,
J. B. POWERS,
B. W. LACY,
WESTEL WILLOUGHBY,
Attorneys and of Counsel for Eleanor Nesbit, Plaintiff in Error.

72 [Endorsed:] No. 70. Law. Eleanor Nesbit *vs.* The Independent District of Riverside, in the county of Lyon. Prayer for reversal. Filed Sept. 21st, 1888. A. J. Van Duzee, cl'k, by J. H. Bolton, d'p'ty.

73 UNITED STATES OF AMERICA, } *ss:*
Northern District of Iowa, }

I, A. J. Van Duzee, clerk of the circuit court of the United States in & for the northern district of Iowa, do hereby certify and return that the writ of error which is hereto attached was served and filed in my office, at Sioux City, Iowa, on the 21st day of November, A. D. 1887, and I now return said writ of error and annexed thereto and hereto attached an authenticated copy of the record of the cause mentioned in said suit and the following-named papers filed thereon, to wit, the assignment of errors, the prayer for reversal, and the citation and proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Sioux City, in said district, this 25th day of September, A. D. 1888.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE, *Clerk,*
By J. H. BOLTON, *D'p'ty.*

Endorsed on cover: Case No. 13268. N. Iowa C. C. U. S. No. 212. Eleanor Nesbit, plaintiff in error, *vs.* The Independent District of Riverside, in the county of Lyon. Filed October 11, 1888.

FILED.
DEC 8 1891
JAMES H. McKENNEY,
CLERK.

Case No. 13,268.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

Term No. 212.

ELEANOR NESBIT, PLAINTIFF IN ERROR,

vs.

THE INDEPENDENT DISTRICT OF RIVERSIDE, IN THE COUNTY OF LYON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

W. WILLOUGHBY,

B. W. LACY,

Of Counsel for Plaintiff in Error.

Case No. 13,268.

SUPREME COURT OF THE UNITED STATES.

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ELEANOR NESBIT, PLAINTIFF IN ERROR,

vs.

THE INDEPENDENT DISTRICT OF RIVERSIDE, IN THE COUNTY OF LYON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is an action at law brought by the plaintiff in error, an alien and citizen of Great Britain, against the defendant in error, a municipal corporation and citizen of the state of Iowa, upon five of defendant's bonds, of date March 27, 1873, for $500 each, maturing in ten years, and bearing interest at the rate of ten per cent per annum, payable semi-annually in accordance with the interest coupons attached to such bonds, copies of which bonds and coupons are attached to the plaintiff's petition (Record p. 5). Judgment was asked for the amount of the bonds, and also for the coupons, excepting certain specified coupons alleged to have been merged in a former judgment.

The defendant by its answer (Record p. 6) plead various defenses, contained in seven different divisions. A demurrer by plaintiff to the second, third, fourth and sixth divisions of such answer was confessed by defendant, (Record p. 9) and the remaining divisions of the answer were amended (Record pp. 10, 13) so that the answer set up in substance as defenses: that the bonds in suit were issued without consideration, fraudulently, without authority, and in excess of the five per cent constitutional and statutory limitation of

indebtedness imposed upon municipal corporations in the State of Iowa, it being alleged in the last amendment to said answer (Record p. 13) "That at the date of issuing the bonds and coupons sued on herein, to-wit, 1873, the last assessed value of the property of the defendant district was $68,307.01, and that five per centum thereof is the maximum amount of which the said district then could legally permit an indebtedness," and that at said date said district had an outstanding indebtedness largely in excess of five per cent of said assessed value.

To the answer setting up said defenses the plaintiff filed her reply (Record p. 11) which, in addition to denials of defendant's allegations, stated in substance as follows: that heretofore this plaintiff brought her action against this defendant in the Circuit Court of the United States for the District of Iowa, upon certain of the interest coupons attached to some of the identical bonds sued upon in the present action, all of which bonds are of the same series and issued at the same time and under the same circumstances, and that the same defenses now plead by defendant could have been plead, and were plead, by defendant as a defense in said former action, and were, in said action, upon trial thereof, adjudicated upon adversely to defendant, and a judgment was rendered in favor of this plaintiff in said former action for the full amount of the coupons therein sued upon; and that by reason of said former adjudication between the same parties, and upon the same issues, the defendant is barred and estopped from relitigating each and all of the defenses now plead in this action.

The parties having filed a stipulation in writing waiving a jury (Rec. pp. 12, 14), the issues were tried and determined by the court, and the court made and filed its special findings upon the facts, upon which it based its judgment, which was against plaintiff.

The following (Rec. p. 15) is such:

SPECIAL FINDING OF FACTS.

The above named parties having filed with the clerk a written waiver of jury and consent to trial to the court, and said action having been tried to the court at a former day of the present October term, A. D. 1885, of this court, and the case taken under advisement, now, on this 28th day of November, A. D. 1885, being still of said October term, the court, being prepared to announce the decision in said case in accordance with the request made by the parties at the trial, makes the following special findings of fact upon which the judgment herein is based:

1st. The Independent School District of Riverside was organized in October, A. D. 1872, the territory embraced therein having previously formed part of the District Township of Rock.

2d. The value of the taxable property within the boundaries of the Independent District, as shown by the state and county tax lists, was for the year 1872 forty-one thousand four hundred and twenty-six dollars, and for the year 1873 sixty-eight thousand three hundred and seven dollars.

3d. That on the 26th and 27th days of March, A. D. 1873, the indebtedness of said independent District, exclusive of the bonds declared on in this action, exceeded the sum of thirty-five hundred dollars.

4th. That the bonds sued on in this action bear date March 27th, 1873, maturing ten years thereafter, are five in number, for five hundred dollars each, or $2,500.00 in the aggregate, exclusive of interest, are numbered 14, 15, 16, 17 and 18, and that the signatures thereon are the genuine signatures of the officers of the District purporting to sign the same, and that said bonds, with the accrued interest, now amount to the sum of five thousand six hundred and ninety-five dollars, which bonds and interest coupons were produced in evidence by plaintiff. The said bonds and interest coupons are in all respects alike except as to number, and each coupon refers to the number of the bond to which it belongs and to said act under which it was issued. All of said bonds contain the following provision in the body thereof: This bond is issued by the Board of Directors of said Independent School District under the provisions of Chapter 98 of the Acts of the 12th General Assembly of the State of Iowa, and in conformity with a resolution of said Board dated the 26th day of March, 1873. A copy of the Act referred to is printed on the back of the bonds. The exhibits attached to plaintiff's petition are correct copies of said bonds and coupons.

4½ That all of said five bonds and the coupons attached belong to the same series and were issued at the same time, under the same circumstances, and part of the same transaction.

5th. That the plaintiff, who is a citizen of Great Britain, bought these bonds and all the interest coupons belonging thereto, as an investment, from one Henry Hutchinson, on the 20th day of December, 1877, paying him therefor the sum of two thousand dollars; that said plaintiff, when she made such purchase, had no other knowledge concerning the bonds or of the facts connected with their issuance than she was chargeable with from the bonds themselves and from the provisions of the constitution and laws of the State of Iowa.

6th. That said bonds were issued without consideration.

7th. That plaintiff brought suit in the U. S. Circuit Court at Des Moines, Iowa, against the said Independent District of River-

side upon certain of the interest coupons belonging to the bonds Nos. 14 and 15, being two of the bonds included in the present action, and in the petition in that cause filed the plaintiff averred that she was the owner of the two bonds Nos 14 and 15 and the coupons thereto attached, and asked judgment upon the six coupons then due and unpaid. To this petition the defendant answered that at the time the bonds were issued the indebtedness of the District exceeded five per cent of the taxable property of the District, as shown by the State and County tax lists, and that the bonds were therefore void under the provision of the constitution of the State of Iowa; that no legal or proper election upon the question of issuing the bonds was held; that the bonds were issued under the pretense of building a school-house with the proceeds thereof, but the same has not been built nor was it intended that it should be built; that the district received no consideration for the bonds, and that the same are fraudulent and void; that plaintiff is not a *bona fide* holder of said bonds.

The case was tried to the Court and judgment was rendered in favor of the plaintiff for the full amount of the six coupons declared on in that cause. It is shown by evidence *aliunde* that the five bonds bought by plaintiff were in the possession of plaintiff's counsel at the trial of the action at Des Moines, and that bonds Nos. 14 and 15 were actually produced and exhibited to the Court at such trial and offered in evidence. It is not shown that at such trial the fact that plaintiff had bought and was the owner of bonds Nos. 16, 17 and 18 was made known to the Court. The judgment entry in said cause shows that on that trial it appeared from the evidence that when said bonds Nos. 14 and 15 were issued the indebtedness of the district, exclusive of these bonds, exceeded the constitutional limitation of five per cent; that the judges trying said cause were divided in opinion upon the question whether the recitals in the bond estopped the defendant from showing this fact against plaintiff and certified a division of opinion on this question, judgment being rendered in favor of plaintiff. It does not appear that the cause was taken to the Supreme Court upon the question certified.

8th. Under the statutes of Iowa, in force in 1872 and 1873, regulating the assessment of property for the purpose of State and County taxation, the lists thereof could not be computed before the month of August, and in March, 1873, when these bonds were issued, the last computed tax list was for the year 1872. Plaintiff on the trial objected to all the testimony tending to show that the bonds in question were in excess of the constitutional or statutory limitation on the ground that defendant was estopped from showing the same by the recitals in the bonds, and, such objection being overruled, plaintiff at the time duly excepted to such ruling.

As a conclusion of law based on such facts the court finds that plaintiff is not entitled to recover, and that defendant should have

judgment for costs. Plaintiff objects on the ground that the facts found are not sufficient to support such judgment, and excepts thereto, and the foregoing findings aud exceptions are ordered filed and made matter of record.

(Signed) O. P. SHIRAS, Judge.

The plaintiff in error having excepted to the judgment against her, based on said special findings, on the ground that the facts found were insufficient to support such judgment, (Record p. 17) a review of such question is sought in this court.

ASSIGNMENT OF ERRORS.

Somewhat condensing and abbreviating the Assignment of Errors contained in the record (p. 25), the plaintiff in error urges that the court below erred as follows:

1st. That from the special findings of the Circuit Court it appears that the defendant in error was estopped from maintaining any of its defenses in this action, including the question as to the plaintiff in error being an innocent holder of the bonds in suit, and in determining otherwise, by its judgment, said court erred.

2nd. That said court erred in determining, by its judgment, based on said special findings of fact, that plaintiff in error was not an innocent holder of the bonds in suit.

3rd. That the facts, as shown by the special findings of fact of said court, were not sufficient to support the judgment rendered thereon, but that, on the contrary, the judgment should have been in favor of the plaintiff in error.

ARGUMENT.

I.

The special findings of the court below, before set out in this brief, show that this suit is brought upon the five bonds of the defendant district, numbered 14, 15, 16, 17 and 18, which were purchased by the plaintiff, a resident of Great Britain, as an investment, long before maturity, for a consideration nearly the face of the bonds, and "that said plaintiff, when she made said purchase, had no other knowledge concerning the bonds, or of the facts connected with their issuance, than she was chargeable with from the bonds themselves, and from the provisions of the constitution and laws of the state of Iowa"; and said findings further show that

the plaintiff had obtained a judgment against defendant in a former action in the same court upon six interest coupons attached to said bonds Nos. 14 and 15, in which former action the defendant set up every defense plead in the present action, including an allegation "that plaintiff is not a *bona fide* holder of said bonds", that is bonds Nos. 14 and 15, which are two of the bonds involved in the present action; that all five of the bonds now in suit were in possession of plaintiff's counsel at such trial in the former action, and said bonds Nos. 14 and 15 were actually produced and exhibited to the court at such trial and offered in evidence; that the judgment entry in said former action showed that it appeared from the evidence therein that when said bonds Nos. 14 and 15 were issued the indebtedness of the district exclusive of these bonds exceeded the constitutional limitation of five per cent; that the judges were divided in opinion upon the question whether the recitals of the bonds estopped the defendant from showing this fact against plaintiff, and certified a division of opinion on this question, judgment being rendered in favor of plaintiff, and no appeal appearing to have been taken.

Upon such findings we desire to urge as proper conclusions of law: *first*, that the defendant was estopped from claiming that plaintiff was not an innocent holder of the bonds and coupons in suit; and, *second*, that in any view of the case defendant was so estopped as to bonds numbers 14 and 15.

First. It appears from the findings that all five of the bonds and coupons were part of the same series, and their purchase by plaintiff one transaction, and that all the defenses made in this action as to the five bonds were made in the former action as to two of these bonds, including the question as to whether plaintiff was an innocent holder, and that all of the testimony on such question produced by defendant in the present action as to the five bonds was in existence and could have been produced in the former action as to the two bonds and the six coupons attached thereto upon which judgment was asked.

Upon this state of facts there could be no serious question that plaintiff's recovery in the former action was conclusive of his right to recover in this under the doctrine laid down in Beloit vs. Morgan, 7 Wall. 619, and Aurora vs. West, 7 Wall. 82. In both of these cases actions were brought upon municipal bonds and coupons, and defendant was held to be estopped from all de-

fenses by reason of adjudications in former actions based upon other coupons. In Beloit vs. Morgan, the court say: "On the 9th of January, 1861, the appellee recovered a judgment at law against the appellant upon another portion of these securities—though not the same with those in question in this case. The parties were identical, and the title involved was the same. All the objections taken in this case might have been taken in that. The judgment of the court could have been invoked upon each of them, and if it were adverse to the appellant, he might have brought the decision here by a writ of error for review. The court had full jurisdiction over the parties and the subject. Under such circumstances, a judgment is conclusive, not only as to the *res* of that case, but as to all further litigation between same parties touching the same subject matter, though the *res* itself may be different." And the court, after citing certain cases, continues: "But the principle reaches further. It extends not only to the questions of fact and of law, which were decided in the former suit, but also to the grounds of recovery or defense which might have been, but were not presented." And in Aurora vs. West the same doctrine is announced, and the statement of the case (p. 84) and of counsel (p 86) indicates that the *bona fides* of plaintiff's holding was in issue in the last action. A like doctrine is laid down by many other courts, including the Supreme Court of Iowa in the case of Whitaker vs. Johnson County, 12 Iowa, 595, in which case it was directly alleged by defendant that the plaintiff had notice of the defenses to the coupons in the second action.

We need not, however, discuss this line of cases farther, as we think it will be conceded that the judgment in the case at bar was erroneous if the doctrine announced by this court in Beloit vs. Morgan, and Aurora vs. West, is to control, but it is urged that this doctrine has been materially modified in the case of Cromwell vs. County of Sac, 94 U. S. 351. But however much this later case may have limited or explained the doctrine understood to be announced in the former cases, it does not in our judgment justify or authorize the conclusions reached by the court below in the case at bar.

The matter in controversy in the Cromwell case in the former action and its effect upon the latter action is stated by the court as follows: (p. 359–360) "Reading the record of the lower court by the opinion and judgment of this court, it must be considered that

the matters adjudged in that case were these: that the bonds were void as against the county in the hands of parties who did not acquire them before maturity and give value for them, and that the plaintiff, not having proved that he gave such value, was not entitled to recover upon the coupons. Whatever illegality or fraud there was in the issue and delivery to the contractor of the bonds affected equally the coupons for interest attached to them. The finding and judgment upon the invalidity of the bonds, as against the county, must be held to estop the plaintiff here from averring to the contrary. But as the bonds were negotiable instruments, and their issue was authorized by a vote of the county, and they recite on their face a compliance with the law providing for their issue, they would be held as valid obligations, against the county in the hands of a *bona fide* holder taking them for value before maturity, according to repeated decisions of this court upon the character of such obligations. If, therefore, the plaintiff received the bond and coupons in suit before maturity for value, as he offered to prove, he should have been permitted to show that fact. There was nothing adjudged in the former action in the finding that the plaintiff had not made such proof in that case which can preclude the present plaintiff from making such proof here. The fact that a party may not have shown that he gave value for one bond or coupon is not even presumptive, much less conclusive, evidence that he may not have given value for another and different bond or coupon."

We can have, and need have, no controversy with this doctrine. The facts and questions involved in the Cromwell case differ materially from those in this case. In the Cromwell case it does not appear that the coupons in the latter action were part of the same purchase and transaction on plaintiff's part as the coupons in the former action, nor is there any claim that plaintiff owned or had any interest in the coupons upon which the second action was brought at the date of the former action. Neither does it appear that it was directly plead by defendant in the former action that plaintiff was not an innocent holder. It simply appeared in the Cromwell case that in the first action defendant produced such evidences of fraud and illegality in the inception of the bonds as to call upon the holder to show that he had given value for them, and as he failed to do so judgment was rendered against him.

But in the case at bar the facts are materially different. As appear from the 5th and 7th findings all five of the bonds were purchased by plaintiff at one date, of one person, for a fixed consideration for the whole, without actual knowledge of any defenses to them, and thus holding them, brought the first action on certain of the coupons attached to two of the five bonds. In such first action the defendant set up every defense which was subsequently plead in the present action, expressly alleging "that plaintiff is not a *bona fide* holder of said bonds." The court in such former action found that said bonds were issued in violation of the constitutional limitation, but held that defendant was estopped from showing such fact by the recitals on the bonds, thus necessarily finding that plaintiff was an innocent holder of the coupons upon which that action was brought. The question, therefore, as to whether plaintiff was an innocent holder of the coupons involved in the former action was an issue directly raised by the pleadings therein, and which the judgment showed was necessarily determined in favor of the plaintiff. But if, as the court below finds in this action, the purchase of all five of the bonds and coupons was one transaction, then, if plaintiff was an innocent holder of the coupons involved in the former action, she was necessarily an innocent holder of the bonds upon which the present action was brought, and is estopped by the former adjudication from further litigating the question; and this conclusion in no way conflicts with the doctrine in the Cromwell case, but is in entire harmony therewith.

But it is suggested in the opinion of the court below, that, in the present action, an additional fact was disclosed by the evidence bearing on the question as to whether plaintiff was an innocent holder of these bonds, such fact being that these five bonds purchased by plaintiff were in the aggregate slightly in excess of five per cent of defendant's taxable property, that she was chargeable with constructive notice of the amount of such taxable property, that this constructive knowledge was sufficient to put her upon inquiry, and that such inquiry would have disclosed the fact that the bonds were in excess of the constitutional limit, and, therefore, as we understand the opinion, plaintiff, by reason of this constructive knowledge, is held not to be an innocent holder of the bonds in suit. In a later part of this argument we shall urge that such constructive knowledge does not affect the question as to plaintiff being a *bona fide* holder of these bonds, but, leaving that question

to one side for the present, we now desire to urge that the disclosure by the testimony of such new fact, even if otherwise material, does not relieve defendant from the estoppel based on the former adjudication. It is, at most, but additional evidence bearing on the question whether plaintiff was a *bona fide* purchaser of these five bonds and coupons. It is evidence of a fact existing at the time of the former action, and just as applicable to the issue involved in that case as in this. If this constructive notice to plaintiff prevented her from being an innocent holder of the bonds involved in the last action, it necessarily had the same effect as to the coupons in the former action.

But it will not be contended that an estoppel based on a former adjudication is affected by the discovery of new or additional evidence. To so hold, as has been often said, would be to destroy the entire doctrine of *res judicata*.

As is said in the case of Smith vs. Town of Ontario, 4 Fed. Rep. 391, in which the effect of a former judgment upon other coupons was discussed, and the doctrine announced in Cromwell vs. Sac county was applied, "If a controversy once tried and determined is to have no effect whenever different evidence upon the same matter in issue can be produced, the only practical result would be to add to the ordinary complications of a trial those which would arise by retrying at the same time a former controversy also."

See also Bigelow on Estoppel (3rd. Ed.) p. 57.

A further consideration may be urged in this connection.

The constructive knowledge of an over-issue of bonds, which it is said that plaintiff had by reason of her own purchase of bonds, amounting to the sum of $2500, is not even a new fact or element appearing for the first time in the present action. The series of bonds in question were for $500 each. The former action was based upon coupons attached to two of the bonds, of which bonds plaintiff averred that she was the owner, and on the trial exhibited and offered in evidence said bonds. Such bonds were on their face numbered 14 and 15, thus clearly showing in the former action an issuance not merely of $2,500 of defendant's bonds, but of at least 15 bonds for an aggregate of $7,500, so that if the second action disclosed constructive notice to plaintiff of an over issue, there was like disclosure in the former action.

There is one further point which we desire to mention in this division of our argument.

The last amendment to the answer (Rec. p. 13) alleged, "that at date of issuing the bonds and coupons sued on herein, to-wit, 1873, the last assessed value of the property of the said district was $68,307.01, and that five per centum thereof is the maximum amount of which the said district then could legally permit an indebtedness," and thereby defendant expressly plead the said assessment of 1873 as controlling the extent to which the defendant district could become legally indebted. The plaintiff had a right to rely upon this being the basis of defendant's defense, and was not required to meet a defense resting upon a wholly different basis. The court in its findings gave the amount of the assessment not only for 1873 but for 1872 also, and as a conclusion of law found that the assessment of 1872 must control. It seems to us that we cannot be required to meet the abstract question as to which year should properly control, but that the defendant and the court should be governed by the position assumed by defendant in its answer, and that defendant having expressly based its defense on the 1873 assessment, and the court having found the amount of the assessment for such year, the conclusions of law and judgment of the court should be confined solely to the finding which was responsive to the issue so made.

In Piatt vs. Vattier, 9 Peters, 415, the court, speaking of certain grounds relied upon by plaintiff which were supported by the evidence but not covered by the pleadings, says, "and unless they are so put in issue the court can take no notice of the proofs, for the proofs to be admissible must be founded upon some allegations of the bill and answer."

If our position as to this is correct then the entire conclusion and reasoning of the court below is erroneous, because the $2,500 of bonds purchased by plaintiff, being much less than five per cent of said assessment of 1873, the plaintiff had no constructive notice of the alleged excessive indebtedness, and she was certainly an innocent holder, and occupying exactly the same position as in the former action, and thus making the issues in the two actions identical. Furthermore, assuming this position to be correct, the cases cited in the opinion of the court below of Buchanan vs. Litchfield 102 U. S. 278, and Dixon County vs. Field, 111 U. S. 83, would be favorable to plaintiff instead of adverse. The bonds in

the case at bar expressly recited that they were issued under the provisions of chapter 98 of the Acts of the 12th General Assembly of Iowa, (4th finding) which statute expressly restricted the issue of such bonds within the five per cent limit of the constitution, thus bringing this case within the doctrine announced by Justice Brewer in Potter vs. Board, etc., 33 Federal Rep. 614. That the words "*under* the provisions," etc., are equivalent to "in *pursuance* of said act" see Mercer Co. vs. Hacket, 1 Wall, 83 and Stoddard vs. Chambers, 2 How. 317.

Second. There are additional grounds for urging that in any view of the case, the former adjudication operates as an estoppel in the present action as to bonds Nos. 14 and 15, and the remaining coupons attached thereto.

The former judgment was based on coupons attached to these very bonds. As appears from the 7th finding, the petition in the former action averred in terms that plaintiff was the owner of said bonds Nos. 14 and 15, and the coupons attached, and the answer, setting up every defense now plead, included the express allegation "that plaintiff is not a *bona fide* holder of said bonds," that is bonds 14 and 15. It therefore appears that the very ground upon which the court below defeats recovery in the present action, viz: that plaintiff is not an innocent holder of the bonds in suit, was expressly and in terms plead in the former action, at least as to said bonds Nos. 14 and 15, and was therein decided adversely to defendant. Not only was it practically impossible for the plaintiff to have been an innocent holder of the coupons involved in the former action without at the same time being an innocent holder of the two bonds to which they were attached, but the allegations of the answer therein on this point, as well as the other points, were in terms directed to the bonds themselves, and such bonds were produced and exhibited to the court and offered in evidence. Therefore as to bonds 14 and 15, and the fourteen coupons attached to each, plaintiff was entitled to judgment upon the special finding even if we concede the most adverse doctrine concerning the effect of former adjudications.

II.

The next point urged by us is, that the court erred in determining by its judgment, based on its special findings, that plaintiff was not an innocent holder of the bonds in suit.

The error of the court upon this point appears so clear to us that we would have preferred to present this question first in our argument, but the presentation of the facts in the case in their natural order seemed to make it easier to reserve this question to the last.

As has before been said, the special findings of the court below show that every defense plead in the present action was plead in the former one, and the opinion of the court below concedes that the former adjudication is conclusive of plaintiff's right to recover, provided she is an innocent holder of the bonds involved in the present action, which question, the opinion urges, is not determined by the adjudication in the former action. Conceding, therefore, for the purposes of the present question only, that the former adjudication does not foreclose the question as to whether plaintiff is an innocent holder of the bonds involved in the present action, and there still remains the vital question as to whether the facts shown by the special findings justify the conclusion that plaintiff is not such innocent holder. If such conclusion was not justifiable then the judgment of the court was clearly erroneous, and should have been in favor of plaintiff. The 5th special finding of the court is as follows: (Rec. 16.)

"That the plaintiff, who is a citizen of Great Britain, bought these bonds and all the interest coupons belonging thereto as an investment from one Henry Hutchinson, on the 20th day of December, 1877, paying him therefor the sum of two thousand dollars; that said plaintiff, when she made such purchase, had no other knowledge concerning the bonds or of the facts connected with their issuance than she was chargeable with, from the bonds themselves and from the provisions of the constitution and laws of the state of Iowa."

The court, therefore, not only failed to find any facts showing that plaintiff was not a purchaser and holder of these bonds in good faith, but affirmatively found that plaintiff, a citizen of Great Britain, purchased these bonds as an investment long before maturity, for a valuable consideration, and without any actual notice of any defenses thereto, thereby finding all the facts necessary to constitute an innocent holder of such paper.

But, nevertheless, the court below by its judgment held that plaintiff was not an innocent holder, and in its opinion, filed with its findings and judgment, bases such conclusion upon the single fact that plaintiff was chargeable with constructive notice that the

bonds purchased by her were in excess of the constitutional limit, and that futher inquiry would have disclosed such fact to her, and therefore she was not an innocent holder. The reasoning of the court below can be most fairly presented by the following quotations from said opinion:

"In other words, she was bound to know and must be held to have known, when these bonds were offered for sale to her, that in March, 1873, the limit of indebtedness which the district could lawfully incur was $2,071.30. As the bonds without interest which she purchased amounted to $2,500.00, she was charged with notice of the fact that the constitutional limitation had been exceeded. Further inquiry would have disclosed the fact that before any of these bonds were issued the limit of lawful indebtedness had been passed, and that no part of the bonds offered for sale were legal and valid. Under such a state of facts it cannot be held that the plaintiff is an innocent purchaser, but, on the contrary, it appears that she bought the bonds under circumstances charging her with illegality thereof." (Rec. 20). The court, then passing to the question whether defendant is estopped from raising this question, as to plaintiff being an innocent holder, on account of the judgment in the former action, holds that defendant is not estopped, and uses the following language: "In effect what was determined in the former suit between the present parties was that plaintiff was an innocent holder for value of the coupons sued on, and as such was entitled to recover, notwithstanding the fact that it appeared from the evidence that the indebtedness of the district exceeded the constitutional limit at the time the coupons sued on were issued. The question upon which the judges were divided in opinion was whether the recitals in the bonds were of such a character as that plaintiff had the right to rely thereon as evidence of the fact that the bonds were within the constitutional limit and therefore valid. It is evident that the decision in that case turned upon the question whether plaintiff was or was not an innocent holder of the coupons sued on, the judgment deciding that she was. According to the ruling in Cromwell vs. Sac County, this judgment does not estop the defendant from contesting the question whether plaintiff is an innocent holder of bonds involved in the present suit." (Rec. 21.)

The position then of the court below in brief is this: That it was adjudicated in the former action that an innocent holder of

coupons attached to the bonds now in suit was protected by the recitals from the defenses made to the bonds; that under the doctrine of the Cromwell case the adjudication in the former action does not estop the defendant from contesting the question in this action as to whether plaintiff is an innocent holder of the bonds now in suit; and that the court decides that the plaintiff is not an innocent holder, notwithstanding she purchased these bonds in the regular course of business, before maturity, for a valuable consideration, without actual notice of any defenses, because she had constructive notice from the records of the defendant district that the amount of the taxable property thereof would not warrant the issuance of the bonds purchased by her, and further inquiry would have shown their invalidity. If, therefore, the court was mistaken in its position that such constructive notice prevented plaintiff from being an innocent holder of the bonds in suit, its entire course of reasoning fails, and its conclusion and judgment were necessarily erroneous, and unsupported by its findings of fact. And to this single, simple question we now address ourselves; our position being that *constructive* notice of facts could not affect plaintiff's character as a *bona fide* holder of negotiable paper, and that nothing could so affect it short of actual notice of defenses or actual bad faith, both of which elements are excluded by the special findings.

This question has been much discussed by both the English and American courts, and the rule adopted has, at different periods, undergone radical changes. A history of these changes, and of the different rules announced at different times, and by different courts, can be found in I. Daniel on Negotiable Inst. (3rd Ed.) pages 718–725, and in Murray vs. Lardner, 2 Wall. 110.

As stated in Murray vs. Lardner, the English courts at one time followed the doctrine announced in Gill vs. Cubbitt, that one was not an innocent holder of paper who took it under circumstances which ought to have excited the suspicions of a reasonable and prudent man, but subsequently, after much criticism, a contrary doctrine was announced by Lord Denman in Goodman vs. Harvey, in the following language: "I believe we are all of the opinion that gross negligence only would not be a sufficient answer where the party has given a consideration for the bill. Gross negligence may be evidence of *mala fides* but is not the same thing. We have shaken off the last remnant of the contrary doctrine.

Where the bill has passed to the plaintiff, without any proof of bad faith in him, there is no objection to his title." This has since been the established doctrine in England and of the majority of the American courts, and is expressly held to be the doctrine of this court in the case above referred to, of Murray vs. Lardner, in which previous decisions of the court are referred to and the doctrine as to who is an innocent holder of negotiable paper summarized as follows: (p. 121) "The party who takes it before due for a valuable consideration, without knowledge of any defect of title, holds it by a title valid against all the world. Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part."

The like doctrine is stated by this court in Hotchkiss vs. National Banks, 21 Wall. 354. In that case the bonds had been stolen, and it was urged that the purchasers were not *bona fide* holders, because there was a provision in the bonds referring to another paper as attached thereto, but which in fact was not attached when the bonds came into the hands of the last holders, and that such circumstance was sufficient to put the purchasers on their inquiry, which would have resulted in a discovery that the bonds were stolen. But the court held otherwise, saying: "A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite such suspicion in the mind of a cautious person, or even gross negligence at the time, will not defeat the title of a purchaser. That result can be produced only by bad faith, which implies guilty knowledge or wilful ignorance, and the burden of proof lies on the assailant of the title."

In the case of Parker vs. Conner, 93 N. Y., the court say: (p. 127) "Both in England and this state, up to a certain period, the doctrine of constructive notice was applied to transfers of commercial paper, and any facts sufficient to put a purchaser of negotiable paper on inquiry were held sufficient to defeat his claim to be a *bona fide* holder, if he neglected to make the proper inquiries. In England this doctrine was overthrown (citing Goodman vs. Harvey and other cases) and the law was declared that actual *mala fides* must be shown to the satisfaction of the jury to deprive a holder for value of the character of a *bona fide* holder, and that

negligence in not inquiring into facts which ought to have put him on inquiry is not sufficient." And in the further course of the opinion it is stated that the above doctrine has since been adopted by the New York courts, "and that the rights of the holder were to be determined by the simple test of honesty and good faith and not by a speculative issue as to diligence or negligence."

The exact doctrine for which we are contending is, we think, correctly stated in I. Daniel on Neg. Inst. (3d Ed.) p. 750, as follows: "Parties negotiating for negotiable instruments are not bound to take notice of public records, which would affect them with notice were they dealing with the subject matter. And, therefore, when there is nothing on the face of the bill or note to give notice of any defects, the fact that a deed of trust securing its payment contains recitals which show that equities or offsets exist between the original parties does not weaken the position of a *bona fide* holder without actual notice."

The question of the effect upon recitals in the bonds of this constructive notice, is the subject of much discussion in the cases of Buchanan vs. Litchfield and Dixon Co. vs. Field, as also Cromwell vs. Sac, before referred to, but there is no suggestion therein that such constructive notice has any bearing upon the *bona fides* of plaintiff's holding of the bonds, but the implication from what is said is quite the reverse.

It seems to us that in considering the question of constructive notice to plaintiff the court below has perhaps confused the bearing which such constructive notice would properly have if the question of the validity of the bonds was an entirely open one, with the bearing which such constructive notice has upon plaintiff's character as an innocent holder. But the former question has been already adjudicated. That is to say, as the opinion of the court below states, the judgment in the former action conclusively establishes that the recitals on these bonds "were of such a character as that plaintiff had a right to rely thereon as evidence of the fact that the bonds were within the constitutional limit," provided she was an innocent holder, and the latter question only is open for investigation in this action. To hold otherwise is to entirely disregard the effect of the former adjudication. Therefore, the question of constructive notice of the extent to which the

defendant district could properly become indebted, no matter how material it would have been in the former action as affecting the force to be given to the recitals on the bonds, or as affecting other defenses therein set up, cannot be considered in this action, unless such constructive notice bears on plaintiff's character as an innocent holder of the bonds in suit, and that it does not so affect her character seems to us to be fully determined by the decisions before cited.

III.

We think that the questions discussed by us in this brief are sufficiently set out and fully covered by the first and second divisions of the Assignment of Errors herein. If it should be thought otherwise then we would suggest that all of the questions are included within the third division of the assignment, which, in more general terms, states the insufficiency of the facts shown by the special findings to support the judgment. This last assignment, in cases like the present one—wherein a jury was waived and a special finding of facts made by the circuit court under the act of March 3, 1865—is held sufficient in Scholey vs. Rew, 23 Wall. 345.

As all of the material questions of fact which were in issue in this case under the pleadings are fully covered by the special findings of the court below, which is equivalent to a special verdict of a jury, it will be conceded, we suppose, that if such facts were insufficient to support the judgment, and the same was therefore erroneous, it necessarily follows that the judgment should have been in favor of the plaintiff. Upon a reversal, therefore, of such judgment by this court, there should be, as we understand, a direction that judgment be entered in favor of the plaintiff, instead of awarding a new trial. This is stated to be the proper practice in the case of Fort Scott vs. Hickman, 112 U. S. 150, see page 165 of the opinion.

We, therefore, respectfully submit that the judgment of the court below should be reversed, and that the case be remanded with direction to enter a judgment for the plaintiff for the amount found to be due in the special findings, with proper interest thereon.

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